HIGH COURT OF UTARANCHAL AT NAINITAL

A.O. No. 272 of 2006

With

Stay Application NO.5192/06

Dalip Kapur Aged 64 years
S/o Late Mr. K.C. Kapur, R/o 56, Tilak Nagar,
Kanpur having Office at 87-88, Shahpur, Kalpi
Road, Kanpur (U.P.) ....Appellant

Vs

1. Vishal Khanna aged about 38years S/o Sri Joginder Lal Khanna, R/o G-5, Biotech Complex, The Mall, Nainital.
2. Kamal Narayan Tripathi, aged about 44 years S/o Sri C.D. Tripathi, R/o Manakpur Estate, Mallital, Nainital.
3. Arvind Prasad aged about 52 years S/o Sri Madhav Prasad R/o D.d. 29, Kalkaji Extension, New Delhi-19.
4. Mukund Prasad aged about 42 years S/o Sri Madhav Prasad R/o D.D.-29 Kalkaji Extension, New Delhi- 19.

.....Respondents

Sri Alok Singh learned Senior Advocate assisted by Sri Dharmendra Barthwal Learned counsel for the appellant.
Sri D.S.Patni, Sri Arvind Vashisht and Sri B.P. Nautiyal learned counsel for the Respondents.

Dated: -16-05-2006

Hon'ble B.S. Verma , J.

Heard Sri Alok Singh learned Senior Advocate assisted by Sri Dharmendra Barthwal and Sri D.S. Patni, Sri Arvind Vashisth and Sri B.P. Nautiyal learned counsel for the respondents.

Learned counsel for the appellant has stated that application under Order 39 Rule (1) and (2) of C.P.C has been finally disposed of by the learned Civil Judge (Senior Division).

Since the application under Order 39 Rule (1) (2) of C.P.C has already been decided. This appeal was preferred against the ex-party order passed under Order 39 Rule 3 of C.P.C without hearing the opposite party. In view of above, the appellant now has a right to prefer the appeal against that order under Order 43 (1) (r) of the C.P.C.

In the circumstances, the appeal has become infructuous dismissed as infructuous.

(B.S.Verma,J)

Dated: -16-5-2006

M.K.